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White Paper on Courts Administration

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WHITE PAPER ON COURTS

ADMINISTRATION

PREFACE

The caseload crisis facing the courts of this province has the potential to seriously undermine the quality of justice in Ontario.

There is broad consensus that this crisis can only effectively be met by court reforms which will apply new management techniques to an ever-increasing workload of the courts.

In 1970 the then Attorney General referred the question of the adequacy of the existing court administration structures to the Ontario Law Reform Commission. In 1973 the Commission set out its findings and recommendations in a Report on Administration of Ontario Courts.

Following extensive discussions with those concerned with the administration of justice throughout the province, a model court administrative structure was established to develop and test the proposals for reform in a region of the province which is a microcosm of the whole. The results of this work have been carefully evaluated. This White Paper presents proposals for court reform based on this work and its evaluation.

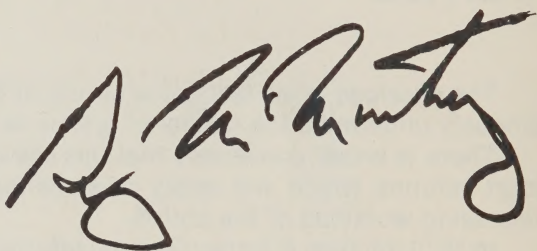
The right of every person to have his case determined according to law and solely on its merits is fundamental to our concept of justice. It demands a court structure within which judges adjudicate free of influence or interference. Indeed, the courts must be so structured as to avoid any possibility that any element of society could influence or interfere or even have the appearance of being able to influence or interfere with the judicial determination of a case. The bulwarks of individual liberty under the law must, of course, always be vigilantly guarded.

This White Paper represents the government's proposals for a re-organization of courts administration which will enable new management techniques to be brought to bear upon the present workload crisis in the courts while preserving and enhancing the right of every individual to a fair judicial hearing. Further, this White Paper explains the need for a re-organization, sets out the details of the government's proposals for re-organization and concludes with a draft of legislation designed to implement these proposals.

While these proposals represent the present direction of the government's policy on this issue, the proposals are not cast in stone.

The judges of this province, almost without exception, have every reason to be proud of the quality of administration of justice that is provided for the citizens of Ontario. In this respect the quality of our judiciary is second to none. Although there has been some degree of consultation with the senior judges of each court, it is essential that the government have the views of all of our judges who wish to comment on these proposals.

At the same time it should never be forgotten or overlooked that our courts belong to the public and they exist solely to serve the public. It, therefore, is also essential that the public examine with care these proposals for the future development of their courts, as these issues are so central to our fundamental liberties. Comments and suggestions from the public are therefore most welcome.

A handwritten signature in black ink, appearing to read 'R. Roy McMurty'. The signature is fluid and cursive, with a large, stylized 'M' and a long, sweeping tail that loops back under the name.

The Honourable R. Roy McMurty, Q.C.
Attorney General

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THE CRISIS FACING THE COURTS

Due to tremendous caseload increases over the last five years, there is genuine concern that the court system could be irreparably damaged unless significant steps are taken.

While none of the courts have escaped heavy additional pressures, the most dramatic changes have taken place in the Provincial Court (Criminal Division). This is reflected in a comparison of the disposition rate of this court in 1970 with that in 1975.

Dispositions

	1970	1975	INCREASE	% INCREASE
Criminal Code	138,674	257,091	118,417	85
Other Federal				
Statutes	17,873	47,427	29,554	165
TOTAL	156,547	304,518	147,971	95
TOTAL CASELOAD				
including Highway				
Traffic Act,	1,842,778	2,830,769	987,991	54
Liquor Control Act				
and Municipal Bylaws				

While these figures give a rough idea of the increases in workload, they do not present the effect this increase has had on the delivery of service to the public.

Serious backlogs exist in the Supreme Court and County Courts. Our Provincial Court (Family Division) has been hard-pressed to provide an acceptable minimum of service to the public.

The constant pressure of caseload increases, in a system not designed to meet such pressures, is having a detrimental and cumulative effect on the disposition rate.

The wheels of the system are spinning, and the judges and court personnel are working, but their productivity is reduced by the lack of an effective organization to manage the court's work.

While some of the difficulties experienced have resulted from a shortage of judicial manpower and inadequacy of resources, much of it is caused by the fundamental management weakness of dividing between the judiciary and a government ministry the overall authority for courts administration. This is reflected by an inability to develop effective case-flow management.

While the problem arises in the court process, its effects extend beyond its doors. As the disposition rate in the criminal courts goes down, there are more remands, which results in an increase in the number of prisoner-custody days with respect to the accused persons remanded in custody. The strain on the courts spills over into the jails, and individuals are kept in custody when they should be having their trials.

Origins of the Caseload Crisis

There are a number of specific factors, such as increased activity in landlord and tenant law, increased activity by federal drug prosecutors over whom the province has no control, the development of changes in the Criminal Code which lead to lengthier and more complicated trials, increased police activity as a result of recent increases in police resources, and general increases in the crime rate and in litigation. Without doubt, the introduction and growth of the Legal Aid Plan has been a major factor contributing to increases in the number of criminal cases going to trial and the length of the trial process. The more general origins are set out in the Report of the Ontario Law Reform Commission on Courts Administration:-

This concern for proper court administration has not developed through any grand design. It has been a reaction to the shortcomings of administration revealed by a massive caseload crisis. The crisis, in turn, is attributable to a number of factors. These factors include population increases, the advent of the automobile and its inevitable share of accidents, the intricacies of modern business, the trend toward lawlessness caused by economic and social deprivation in urban society, the growing recognition of individual rights in labour and social matters, the continued expansion of the regulatory powers of government, and the decline of the family and the church as social institutions capable of resolving disputes. The courts in Ontario, like those of most other jurisdictions of the Western world, have not escaped this caseload crisis.

RECENT DEVELOPMENTS IN COURTS ADMINISTRATION IN ONTARIO

Until 1968 the individual counties and districts throughout the province bore the major financial responsibility for administering the county and district courts. The municipalities had primary financial responsibility for magistrates' courts. The individual judges presiding over the courts undertook many administrative tasks with the Inspector of Legal Offices, an official of the Attorney General's Ministry, performing some supervisory functions over court officials. The court structure was highly decentralized, reflecting the needs of a rural rather than urban society. It was clear by 1968 that there were great discrepancies in the facilities and services available in various parts of the province, and a systematic approach was required to ensuring adequate facilities and level of service for all residents of the province. A major change in courts administration took place in 1968 when the province and the Ministry of the Attorney General assumed, for the first time ever, the responsibility for courts administration.

Because courts administration in Ontario had never been subjected to a comprehensive analysis in terms of modern administrative management techniques, the Attorney General in 1970 referred to the Ontario Law Reform Commission the whole question as to how the traditional and ancient methods of courts administration could best be adapted to the needs of the public in the 20th Century.

In 1973 the Ontario Law Reform Commission completed its Report. The then Attorney General and the government endorsed the fundamental premises which the Commission had adopted, while raising some concern about the specific operational proposals.

During 1973, the then Attorney General and his Deputy, together with senior law officers of the Crown and senior administrators, travelled throughout the province to consult with the judiciary, court administration officers, and Crown Attorneys in relation to court reform proposals. Regional committees were established to develop full response from all facets of the court system.

As a result of this consultation, the Ministry initiated a regional developmental project to test the feasibility of various court reform proposals, in light of the Ministry's fundamental premises and goals for court reform.

DEVELOPMENT OF THE CENTRAL WEST PROJECT

The Central West Region, a group of ten counties and judicial districts clustering around Hamilton, was selected for the development project, because it provides a microcosm of the entire province.

The objective of the project was to provide a setting for developing and testing administrative methods and services for the courts.

An Attorney General's Advisory Committee was established under the Chairmanship of the Deputy Attorney General. It included nominees of the Chief Justice of Ontario, the Chief Justice of the High Court, the Chief Judge of the County and District Courts, the Chief Judge of the Provincial Court (Criminal Division) and the Chief Judge of the Provincial Court (Family Division) and two members of the Law Society of Upper Canada, engaged in active practice in the Region, appointed by the Attorney General.

A Management Team of Ministry personnel with shared expertise in all areas of courts administration was appointed to direct the project and to develop proposals for the consideration of the Advisory Committee. The Advisory Committee was given responsibility for initiating and assessing various administrative reforms in the courts of the region.

The Central West Project received legislative sanction in *The Administration of Courts Project Act, 1975*.

Objectives of the Central West Project

The Project Management Team concentrated its activities in the following areas:-

- (a) development of office standards for the Provincial Courts (Criminal Division) and (Family Division);
- (b) general management of the court offices by the management team;
- (c) development of more effective techniques for allocating the work of court reporters and the preparation of transcripts;
- (d) development of statistical analysis methods and techniques;
- (e) development of evaluative criteria and standards related to court productivity;
- (f) case-flow management.

In all but one crucial area, the Project Team achieved considerable success. The development of administrative support services permitted the project team to:-

- (a) monitor the effectiveness of individual offices;
- (b) allocate administrative resources more effectively and efficiently;
- (c) develop a uniform response, throughout the area, to administrative changes in court operations.

However, as discussed below, the present divided administrative structure of the courts prevented any real progress in the key area of case-flow management.

Evaluation of the Case-flow Management Experience in Central West

One of the most important initiatives taken by the Project Management Team, with the approval of the Advisory Committee, was the development of a case-flow management system in the Provincial Court (Criminal Division) in Halton County. Its objective was to re-arrange the work of the criminal courts to make maximum use of judicial and other resources and increase the convenience of the public. The proposal for a case-flow management system involved the complete re-scheduling of all the business of the criminal courts, the changing of the time of commencement of various courts, the re-allocation of duties between Provincial Judges and Justices of the Peace, a change in the procedure for setting trial dates, a change in the in-take procedure for scheduling first appearances of cases not previously dealt with, a change in adjournment procedures, a change in the number and location of various court sittings, the development of a new system for streaming certain types of cases into different courts, and the allocation of specific blocks of judicial time for the disposition of certain types of cases.

The attempt to introduce the case-flow management system brought into sharp focus the fundamental management weakness of dividing between the judiciary and the Ministry the overall authority for courts administration. The Central West experiment proved that divided management is detrimental to any effective court reform, cumbersome in practice and functionally impractical.

Although the Project Management Team of the Ministry designed the case-flow management system in Central West, they did not have the authority to execute the system because the execution of every single administrative decision made by the Ministry personnel depended entirely upon the decision of individual judges made in individual cases. Quite properly, of course, Ministry personnel had no authority over these decisions. Divided power over case-flow management thus resulted in a lack of unified control and a lack of any single authority capable of making the decisions which would make the system work. As a result of this divided control and lack of unified authority, the case-flow management project was largely unsuccessful. This was recognized by the Attorney General's Advisory Committee which, after lengthy discussion, unanimously decided that the responsibility for case-flow management should rest with the judiciary.

CENTRAL IMPORTANCE OF CASE-FLOW MANAGEMENT

The Central West Project proved that case-flow management is a key to effective court reform. Case-flow management involves the organization of the flow of cases through courts and the allocation of court resources, including judges, to meet predetermined standards. The Central West Project demonstrated that critical control over the conduct of cases and their movement through the system rests not with the administrators outside the court but with the judges in the court room. No administrative decision made with respect to case-flow management can be successfully implemented without the active support of the judges in the courtrooms.

Effective case-flow management requires the exercise of a measure of control over the actions of Judges, Crown Attorneys, court officials, defence counsel, police, and those members of the public who serve as jurors and witnesses. Only the judge is vested with the necessary power to exercise effective control over the actions of lawyers, police, jurors and witnesses as they relate to cases before the court over which he presides. Only those in the judicial hierarchy can be given power to develop and apply policies, guidelines and directions to assist the individual judges in the disposition of cases. Split control over judicial and administrative matters must ultimately result in no control. If effective management is to be attained, the present management must be unified.

THE STRUCTURE PROPOSED BY THE LAW REFORM COMMISSION AND THE GOVERNMENT'S INITIAL RESPONSE

The court administrative structure recommended by the Ontario Law Reform Commission was predicated on the retention of a division of responsibilities between those related to administration and those related to adjudication. It recommended that a Provincial Director of Courts Administration, accountable directly to the Attorney General, be given responsibility for administrative matters and the individual judges continue to be responsible for adjudication. Any questions as to whether a function was adjudicative or administrative would be resolved by the individual judges.

The government's initial response to the recommendations shared the assumption made by the Commission that it was possible to have effective court reform with divided responsibility. Based on the viability of a division of authority, the government indicated that it would require closer supervision of administrative matters by the Attorney General than was recommended by the Commission.

The Central West Project has proven that there can be no truly effective reform without the presence of a single authority having power to ultimately determine all issues related to court administration. Without a single authority, there can be no case-flow management: without case-flow management, there is no real court reform. Divided responsibility is unworkable.

WHAT SINGLE AUTHORITY

Effective court reform is impossible under the present structure of courts administration which divides the authority for courts administration between the judiciary and the Ministry of the Attorney General. Effective court reform requires a structure of courts administration which consolidates authority for case-flow management and the subsidiary administrative services under one unified authority. It is essential to recognize that effective case-flow management can only be achieved if those responsible for that management are responsible for, and have control over, the allocation of all resources necessary to implement case-flow control.

Those responsible must not only be able to control administrative personnel and capital plant but also must be able to allocate judicial officers and through them influence the actions of such participants in the court process as lawyers, police, jurors and witnesses.

Experience In Other Jurisdictions

Both England and the United States have discovered that effective court reform requires a consolidation of the authority for courts administration into a single framework. The situation is somewhat different in the United States because of the American constitutional doctrine of the separation of powers. The situation in England is somewhat different because of the unique constitutional position of the Lord Chancellor who is at the same time a member of Cabinet, a member of the House of Lords and a judge. Although each situation is different from a constitutional point of view, both England and the United States have recognized that functionally, authority for courts and effective court administration requires unified control at the top of the system. Both systems have consolidated this control in the hands of senior judicial officers.

The Role of the Attorney General

Divided authority has not yet created problems. It is only in recent years, with the explosion of workload, that it has been necessary to exert authority over the court system by the application of modern management techniques through case-flow management. It is only in the process of attempting to institute case-flow management in Central West that the dimensions became clear of the potential conflict between the role of Attorney General as the chief litigant before the courts and the chief administrator of the courts. This potential conflict was of no consequence in the days when relatively low caseload made it unnecessary for the Attorney General to impose managerial control over the courts in order to squeeze more work out of the system. As the question of administrative control becomes crucial, the potential conflict in the role of the Attorney General becomes more apparent. This problem has been faced by other jurisdictions during the process of court reform. When the United States adopted for its federal courts a structure which unified that consolidated authority for the courts administration under the judiciary, the then Attorney General for the United States said:-

“The Attorney General presently fixes the numbers and salaries of the court clerks, the deputies, the judges’ secretaries, and the amount and character of equipment for judges and clerks. It controls the travel arrangements, the accommodation in federal buildings, the payment of salaries of judges, clerks, and deputies, and the travel expenses for judges and clerks. It controls even the power of judges and their law clerks and the secretaries to travel on official business. It prepares and presents to the Bureau of the Budget the estimates for the expenses of the courts, and it is with all of this power over the affairs of the court, the principal litigant before them.”

While the American experience is in many ways different from ours, this potential conflict in the role of the Attorney General will become particularly serious if there is any real attempt, under the present system of courts administration, to impose direct managerial controls on the courts.

Justice Must Be Seen to be Impartial

The present structure of divided authority has the potential to diminish public confidence in the administration of justice. The value of the courts as an impartial forum for the resolution of conflicts depends upon public perception of the independence of the courts from the parties to the conflict and particularly their independence from the government.

An increased presence by the government in the administration of case-flow management will inevitably provide the opportunity, generally and in individual cases, to raise the spectre of interference in the judicial process. Even though unfounded, that kind of allegation can seriously impair the value, to the public, of the courts. It is of fundamental importance not only that justice be done, but also that it is actually seen by the public to be done. It is clear that the Attorney General cannot be the unified authority the system needs.

A Judicial Council

Neither the Attorney General nor the senior judiciary, under the present system of divided responsibility between the judicial and administrative business of the courts, have any effective power to develop and apply case-flow management standards for individual courts and judges and for the court system as a whole. Constitutional principle could never permit judges to receive orders from a minister or his servants with respect to the judges' working patterns or caseload. There is, however, no difficulty if individual judges receive this kind of direction from senior judges. Under this proposal, a Judicial Council of senior judges would be given the power to set working standards for judges and to apply those standards. It is no interference with judicial independence for the Judicial Council composed of senior judges to develop and apply administrative guidelines and working standards.

The Judicial Council composed of the senior judiciary would have authority and responsibility for establishing and applying policy directives on all administrative matters whether the actions required are those of court personnel or those of individual judges. The actual administrative work would be done by trained court administrators acting under the overall direction of and applying the principles and standards established by, the Judicial Council.

IMPLICATIONS FOR RESPONSIBLE GOVERNMENT

Section 92 of the British North America Act provides: -

In each Province the Legislature may exclusively make laws in relation to matters coming within the classes of subjects next hereinafter enumerated, that is to say, —

14. The administration of justice in the Province, including the constitution, maintenance, and organization of provincial courts, both of civil and of criminal jurisdiction, and including procedure in civil matters in those courts.

If the courts were not given special constitutional status, responsibility for all aspects of the administration of justice would be that of the legislature and the executive to which it delegates its authority. However, this constitutional jurisdiction is properly limited by the concept of the independence of the judiciary, in its adjudicative functions, from government. It is further limited by virtue of the fact that the judges of the Supreme Court and the County and District Courts are appointed by the Governor General under s.96 of the *British North America Act*, have their salaries fixed and provided by the Parliament of Canada under s.100 of that Act and justices of the Supreme Court have their tenure secured under s.99 of the Act. In reality the power to administer the courts is so circumscribed as to make it impossible for the government to directly effect those reforms to the court system necessary to meet the existing caseload crisis.

If this proposal is implemented, the government would not have control over the day-to-day administration of the courts. It would retain its overall authority and responsibility in relation to the administration of justice through the following mechanisms: -

- (a) control of the operational budget;
- (b) control of the capital budget ;
- (c) retention of the appointment power in relation to Provincial Judges, Masters of the Supreme Court, County and District Court clerks, Sheriffs, Justices of the Peace and other court officials now appointed by the Lieutenant Governor in Council on the recommendation of the Attorney General;

- (d) retention of civil service standards in relation to recruitment, promotion, job classification, salary, etc.;
- (e) retention of Ministry of Government Services standards in relation to accommodation;
- (f) general provincial audit controls;
- (g) the role of The Advisory Committee on Court Administration in monitoring the operations of the court system;
- (h) the regulation-making power under the statute establishing the new structure;
- (i) the power to introduce legislation in relation to the constitution, maintenance and organization of the courts.

CONCLUSION

The Central West Project demonstrated that in our courts administration system judicial and administrative functions are so interwoven that any system which attempted to confer control on the basis of the distinction would fail to meet the goals of effective court reform. The only way to achieve any unified managerial control over case-flow is to place overall control in the hands of a central authority with the ability to develop and apply case-flow management standards upon individual courts. Neither the constitution nor the public would permit this authority to be wielded by the Attorney General. Effective management controls over individual courts and upon the court system as a whole can only be imposed where ultimate authority is vested in a judicial office. It is proposed that ultimate authority and responsibility be conferred upon a Judicial Council composed of the senior judiciary.

As has been mentioned, the United States and Great Britain have adopted different solutions to vest unified control over courts administration in a judicial office. Changes in the court structure to meet public needs have taken place in the past and, no doubt, will continue to take place. While the proposed court structure should permit the implementation of reforms necessary to ensure the public the level of service they presently require, further and other arrangements can be made to meet future needs.

The remainder of this White Paper has a twofold purpose: - first, to present the proposals in detail; and, second to provide a draft of the legislation designed to implement the proposals.

DETAILS OF PROPOSAL

BASIC PROPOSAL

1. *Legislation be enacted to transfer the day-to-day administrative, financial and operational aspects of courts administration from the Ministry of the Attorney General to an Office of Courts Administration headed by a Judicial Council.*

JUDICIAL COUNCIL

2. *A Judicial Council be established, to consist of the Chief Justice of Ontario, as Chairman, the Chief Justice of the High Court, the Chief Judge of the County Court, a County Court Judge appointed by the Lieutenant Governor in Council, the Chief Judge of the Provincial Court (Criminal Division) and the Chief Judge of the Provincial Court (Family Division);*
3. *The Judicial Council be given the power to develop and implement case-flow management standards for individual courts and for the court system as a whole, including full power to assign cases and judges to various courts and to set working standards for the judiciary;*
4. *The Judicial Council have disciplinary powers over the judges and courts to the full extent possible;*
5. *The Judicial Council be responsible for the engagement and dismissal of all court staff pursuant to the provisions of The Public Service Act, the management and allocation of space in all existing court facilities, the efficient disposition of cases in the several courts, the reporting of judgments, the assignment of judges to the sittings of the courts and the supervision of the conduct of the business of the courts;*
6. *The Judicial Council not less frequently than annually, report to the Attorney General on the buildings and facilities of the courts and recommend to the Attorney General any additional or replacement facilities which the Council may from time-to-time consider necessary.*
7. *The Judicial Council after the close of each fiscal year deliver to the Attorney General a report on the affairs of the Office of Courts Administration and the Attorney General submit the report to the Lieutenant Governor in Council and then lay the report before the Legislative Assembly;*

8. *The Judicial Council have power to close or relocate any existing court in the province only with the concurrence of the Attorney General;*
9. *The Attorney General review with the Judicial Council its recommendations with reference to buildings and facilities and submit the matter to the Ministry of Government Services and the Management Board of Cabinet for consideration and inclusion in the capital budget of the Government of Ontario to the extent approved by the Cabinet;*

OFFICE OF COURTS ADMINISTRATION

10. *An Office of Courts Administration be established to carry out the day-to-day administration of the administrative, financial and operational aspects of courts administration under a Director of Courts Administration responsible to the Judicial Council;*
11. *The Office of Courts Administration be headed by a Director of Courts Administration who shall be a public servant with the status of a Deputy Minister, appointed by the Lieutenant Governor in Council on the recommendation of the Attorney General, and subject to removal by the Lieutenant Governor in Council upon the recommendation of the Judicial Council. The salary of the Director should be fixed by the Lieutenant Governor in Council;*
12. *The Director supervise all administrative matters relating to the various offices of the several courts throughout the province under the supervision and direction of the Judicial Council;*
13. *The Director maintain the Ontario Office of Courts Administration in the Municipality of Metropolitan Toronto;*
14. *The Office of the Accountant of the Supreme Court, together with his administrative support staff, be transferred to the Office of Courts Administration and report directly to the Director of Courts Administrations;*
15. *The staff of the Ministry of the Attorney General presently engaged in courts administration be transferred to the Office of Courts Administration, and all such staff and all future appointments to be subject to The Public Service Act and the standards of the Civil Service Commission. The Office of Courts Administration have its own Personnel Division;*

16. *The Director prepare the operating budget and the capital budget of the Office of Courts Administration to be approved exactly the same as the budget of any operating ministry;*
17. *The accounts of expenditure be subject to annual review by the provincial auditor;*
18. *The estimates of the Office of Courts Administration be carried into the Legislative Assembly by the Attorney General separate from the estimates of the Ministry of the Attorney General;*
19. *The estimates of the Office of Courts Administration be conducted in the Assembly or in Committee in the same manner as the estimates of any ministry;*

THE ADVISORY COMMITTEE ON COURTS ADMINISTRATION

20. *The Advisory Committee be established to monitor the overall administration of the work of the Office of Courts Administration and to initiate studies in relation to various aspects of court administration and procedure, to investigate areas where change is necessary, and to look into any matter referred to it by the Attorney General;*
21. *The Advisory Committee consist of the Chairman of the Judicial Council as Chairman of the Advisory Committee, the Deputy Attorney General, the Deputy Minister of Government Services, the Treasurer of the Law Society of Upper Canada, the Director of Courts Administration, and two lay members appointed by the Lieutenant Governor in Council;*
22. *The Advisory Committee have access to all information developed within the Office of Courts Administration and be able to rely upon the staff resources of the Ministry of the Attorney General;*

POWERS NOT TO BE CONFERRED UPON JUDICIAL COUNCIL

- 23. *The Lieutenant Governor in Council retain the power to appoint on the recommendation of the Attorney General, Provincial Judges, Masters of the Supreme Court, Sheriffs, County and District court clerks, local registrars of the Supreme Court, justices of the peace, and other court officials presently appointed by the Lieutenant Governor in Council;*
- 24. *The Attorney General retain responsibility for all legislative programmes in respect of the court system;*
- 25. *The government retain overall authority and responsibility in relation to the administration of justice through its fiscal, legislative and other controls, such as the standards of the Civil Service Commission.*

ALL FURTHER STEPS TO BE TAKEN

- 26. *Such further and other provisions be made to carry out the purpose and intent of this proposal, and all necessary consequential amendments be made to existing legislation.*

APPENDIX

DISCUSSION DRAFT OF THE PROPOSED COURTS ADMINISTRATION ACT

EXPLANATORY NOTE

The Bill establishes the Ontario Office of Courts Administration with responsibility for administering the operation of the courts in order to ensure their efficient operation.

The Office will consist of the Judicial Council, the Director of Courts Administration and supporting staff. The Judicial Council will consist of the Chief Justice of Ontario (as chairman), the Chief Justice of the High Court, the Chief Judge of the County and District Courts, the Chief Judge of the Provincial Courts (Criminal Division), the Chief Judge of the Provincial Courts (Family Division) and a Judge of a County or District Court appointed by the Lieutenant Governor in Council. Subject to the direction of the Judicial Council, the Director is responsible for the operation and the performance of the function of the Office.

The Bill also establishes the Courts Administration Advisory Committee consisting of the chairman of the Judicial Council (as chairman), the Deputy Attorney General, the Deputy Minister of Government Services, the Treasurer of The Law Society of Upper Canada, the Director of Courts Administration and two representatives of the public.

The function of the Committee will be to monitor the operation of the courts and to report with its recommendations to the Minister. The Committee is also empowered to institute and direct studies and research related to the operation of the courts.

The Bill provides for the development by the Ministry of a management information system in respect of the operation of the courts, for the assistance of the Ministry, the Office and the Advisory Committee.

The Bill also provides that the estimates of moneys required for the purposes of the Act will be submitted by the Minister to the Assembly separate from the estimates in respect of the Ministry. The Bill also provides for auditing by the Provincial Auditor.

DISCUSSION DRAFT OF THE PROPOSED ACT

An Act to provide for the Reorganization of the Administration of the Courts

1. In this Act,

Interpre-
tation

- (a) “Committee” means the Courts Administration Advisory Committee established under subsection 1 of section 7;
- (b) “courts” means the Supreme Court, the County Courts and District Courts, the Provincial Courts (Criminal Division) and Provincial Courts (Family Division), the Surrogate Courts and the Small Claims Courts;
- (c) “Courts Administration Office” means the Ontario Office of Courts Administration established under section 2;
- (d) “Director” means the Director of Courts Administration appointed under subsection 1 of section 5;
- (e) “Minister” means the Attorney General;
- (f) “Ministry” means the Ministry of the Attorney General;
- (g) “regulations” means the regulations made under this Act.

2. There shall be an Ontario Office of Courts Administration consisting of the Judicial Council, the Director and such staff as may be necessary from time to time to carry out the function of the Office.

Ontario
Office of
Courts
Adminis-
tration
established

3.—(1) It is the function of the Courts Administration Office to administer the operation of the Supreme Court, the County Courts and District Courts, the Provincial Courts (Criminal Division) and Provincial Courts (Family Division), the Surrogate Courts and the Small Claims Courts in order to ensure the efficient operation of the courts.

(2) In the carrying out of its function, the Courts Administration Office has the power and the duty,

- (a) to establish, prescribe and regulate such administrative policies and procedures as the Judicial Council considers necessary for the efficient operation of the courts;
- (b) to initiate, develop, operate and supervise the operation of management practices and systems for the efficient operation of the courts including the development and application of standards for the use of premises and the employment of the services of the staff of the Courts Administration Office;
- (c) to keep the records of the proceedings of the courts;
- (d) to manage the financial affairs of the courts;
- (e) to prepare estimates of the sums of money that will require to be provided by the Legislature for the purposes of the Courts Administration Office and the operation of the courts, and to deliver such estimates to the Minister and to deliver to the Minister annually or more frequently as the Minister may require forecasts, estimates and analyses of revenues, expenditures, commitments and other data pertaining to the operation of the Courts Administration Office and each of the courts;
- (f) to manage and allocate the use of premises available to the courts;
- (g) to report or to supervise or provide for the reporting of judgments;
- (h) to report to the Minister on any matter in respect of the administration of the operation of the courts that is referred to it by the Minister or on which the Judicial Council considers it desirable to report to the Minister.

(3) Notwithstanding subsections 1 and 2 and except with the concurrence of the Minister, the Courts Adminis-

tration Office shall not permanently or for an indefinite period of time close any court premises or change the location of any court premises.

4.—(1) The Judicial Council shall consist of the Chief Justice of Ontario who shall be chairman, the Chief Justice of the High Court, the Chief Judge of the County and District Courts, the Chief Judge of the Provincial Courts (Criminal Division), the Chief Judge of the Provincial Courts (Family Division) and a Judge of a County or District Court who shall be appointed by the Lieutenant Governor in Council. Judicial Council

(2) In the case of the absence or inability to act of the chairman of the Judicial Council or of there being a vacancy in the office of the chairman, the members of the Judicial Council present at the meeting shall appoint an acting chairman who shall act as and have all the powers of the chairman during the meeting. Acting chairman of Judicial Council

(3) Three members of the Judicial Council constitute a quorum of the Judicial Council. Quorum

(4) The Judicial Council shall direct and control the performance of the function of the Courts Administration Office. Authority of Judicial Council

5.—(1) The Lieutenant Governor in Council, upon the recommendation of the Minister, shall appoint the Director of Courts Administration. Director

(2) The Director shall hold office during good behaviour but shall be removable from office for cause by the Lieutenant Governor in Council upon the recommendation of the Judicial Council. Term of office

(3) The Director shall rank as a deputy minister of a ministry and, subject to the direction of the Judicial Council, is responsible for the operation and the performance of the function of the Courts Administration Office and shall perform such other functions as are assigned to him by the Judicial Council, any Act or the regulations. Director's functions

(4) The office of the Director shall be in The Municipality of Metropolitan Toronto. Office of Director

6. The staff of the Courts Administration Office, Staff

(a) shall include,

(i) the officers and employees of the courts, and

(ii) the persons employed in the public service,

in such positions or classifications as may be designated by the regulations; and

(b) shall include,

R.S.O. 1970,
c. 386

(i) such employees appointed under *The Public Service Act* on the recommendation of the Judicial Council, and

(ii) such officers appointed by the Lieutenant Governor in Council on the recommendation of the Minister,

as may be necessary to carry out the function of the Office.

Proposed
appointments
of provincial
judges, etc.

7. The Judicial Council shall, at the request of the Minister, consider proposed appointments of provincial judges, masters and justices of the peace and report thereon to the Minister.

Directions
by Judicial
Council

8.—(1) The Judicial Council, in directing the performance of the function of the Courts Administration Office and having regard to the number of judges available for service in the courts and to the volume and the nature of the business requiring to be dealt with by the courts, may from time to time give directions as to,

(a) the allocation of cases or classes of cases to any of the courts;

(b) the sittings of any of the courts, including chambers;

(c) the times and the occasions when and the places where the judges, masters and justices of the peace or such one or more of them as the Judicial Council may direct shall sit for the disposition of the business of the courts or of any of the courts.

Duty of
Judges

(2) Every judge, master or justice of the peace shall sit at such time, on such occasion and at such place as the Judicial Council may direct and shall, in the disposition of the business of the court, have regard to any direction of the Judicial Council under subsection 1.

Complaints
in respect
of judges

9.—(1) The Judicial Council shall receive complaints respecting,

- (a) the misbehaviour of or neglect of duty by judges, masters or justices of the peace;
- (b) the failure of judges, masters or justices of the peace to abide by, follow or have regard to directions given by the Judicial Council;
- (c) the inability of judges, masters or justices of the peace to perform their duties,

and shall investigate each such complaint including review thereof with the judge, master or justice of the peace complained against where appropriate and shall make such recommendations to the Minister with respect thereto as it considers proper.

(2) The Chairman of the Judicial Council may, where he considers it appropriate, transmit a complaint against a judge, master or justice of the peace to the proper chief judicial officer or to the Canadian Judicial Council, established under the *Judges Act* (Canada), as the case requires.

Transmission of complaints

R.S.C. 1970, c. J-1

(3) The Judicial Council may recommend to the Lieutenant Governor in Council that an inquiry be held under section 4 of *The Provincial Courts Act* in respect of a judge appointed under that Act.

Recommendation of inquiry

R.S.O. 1970, c. 369

(4) The proceedings of the Judicial Council in respect of a complaint against a judge, master or justice of the peace shall not be public, but it may inform and advise the Minister respecting matters that it has investigated or reviewed.

Advising Minister

(5) The Judicial Council, in proceedings in respect of a complaint against a judge, master or justice of the peace, has the powers of a commission under Part II of *The Public Inquiries Act, 1971*.

Powers

1971, c. 49

10. No action or other proceeding for damages shall be instituted against the Courts Administration Office or any part, member or officer thereof or any person acting under the authority of any of them for any act done in good faith in the execution or intended execution of any power, duty or function of any of them or of him.

Protection from liability

11.—(1) There shall be an advisory committee to be known as the Courts Administration Advisory Committee consisting of the chairman of the Judicial Council who shall be chairman, the Deputy Attorney General, the Deputy Minister of Government Services, the Treasurer of The Law Society of Upper Canada, the Director and two

Courts Administration Advisory Committee established

persons who shall not be employed in the public service of Ontario in the employ of any ministry appointed by the Lieutenant Governor in Council upon the recommendation of the Minister.

Function of
Committee

(2) It is the function of the Committee and it has power,

- (a) to monitor the operation of the courts;
- (b) to consult with the Judicial Council and the Director in the course of carrying out its function under clause *a*;
- (c) to institute and direct studies and research related to the operation of the courts;
- (d) to report with its recommendations to the Minister on the operation of the courts yearly or more often as the Minister may require;
- (e) to report with its recommendations to the Minister on such plans and proposals in respect of the operation of the courts as the Minister may from time to time refer to the Committee,

for the purpose of ensuring the efficient operation of the courts.

Acting
chairman of
Committee

(3) In the case of the absence or inability to act of the chairman of the Committee or of there being a vacancy in the office of the chairman, the members of the Committee present at the meeting shall appoint an acting chairman who shall act as and have all the powers of the chairman during the meeting.

Quorum

(4) A majority of the members of the Committee, including one of the members of the Committee appointed by the Lieutenant Governor in Council, constitutes a quorum.

Staff
assistance to
Committee

(5) The Ministry shall provide such staff assistance as is necessary to carry out the function of the Committee.

Management
information
system

12. The Ministry shall develop and operate a management information system in respect of the operation of the courts for the assistance of the Ministry, the Committee and the Courts Administration Office.

Regulations

13. The Lieutenant Governor in Council may make regulations,

(a) assigning additional duties to the Director;

(b) designating positions or classifications of persons in the public service who shall be members of the staff of the Courts Administration Office.

14.—(1) Annually, or more frequently on the request of the Minister, the Judicial Council shall report to the Minister on the premises, fixtures and equipment available to the courts together with the recommendations of the Judicial Council in respect thereof and the Minister shall review the recommendations with the Judicial Council. Report on premises, etc.

(2) The Minister shall present the recommendations of the Judicial Council to the Minister of Government Services and thereafter shall present them to the Management Board of Cabinet, which shall review them together with the recommendations of the Minister and the Minister of Government Services and make such alterations as the Management Board considers proper. Consideration of report

(3) The Minister shall provide for the recommendations as altered by the Management Board of Cabinet in the estimates of the sums of money required to be provided for the purposes of this Act. Provision in estimates

15. The fiscal year for the purposes of this Act shall be the same as the fiscal year of the Consolidated Revenue Fund. Fiscal year

16. The Judicial Council after the close of each fiscal year shall deliver to the Minister an annual report on the affairs of the Courts Administration Office and the Minister shall submit the report to the Lieutenant Governor in Council and shall then lay the report before the Assembly if it is in session or, if not, at the next ensuing session. Annual report

17. The Minister is responsible for the administration of this Act. Minister responsible for administration

18. The Minister shall prepare and shall lay before the Assembly, separate from the estimates in respect of the Ministry, the estimates of the sums of money that will be required to be provided by the Legislature for the purposes of this Act. Estimates

19. The accounts and financial transactions in respect of the moneys provided for the purposes of this Act shall be audited annually by the Provincial Auditor. Audit

Expenses of
adminis-
tration

20. The moneys required for the purposes of this Act shall be paid out of the Consolidated Revenue Fund until the end of the fiscal year and thereafter out of such moneys as are appropriated therefor by the Legislature.

Conflict

21. Where a conflict appears between any provision of this Act and any other Act or regulation, the provision of this Act shall prevail.

Repeal

22.—(1) Sections 7 and 8 of *The Provincial Courts Act*, being chapter 369 of the Revised Statutes of Ontario, 1970, are repealed.

Idem

(2) Section 99a of *The Judicature Act*, as enacted by the Statutes of Ontario, 1975, chapter 30, section 4, is repealed.

Idem

(3) Section 9 of *The Justices of the Peace Act*, as enacted by the Statutes of Ontario, 1973, chapter 149, section 3, is repealed.

Commence-
ment

23. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

24. This Act may be cited as *The Courts Administration Act*.



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